

AUTHORITY FOR ADVANCE RULING, TAMILNADU
INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, DOOR NO.32,
5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI – 600 003.

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.

Members present are:

1. Shri T.G. Venkatesh, I.R.S
Member/ Additional Commissioner,
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -34
2. Tmt. K. Latha, M.Sc., (Agri.),
Member/ Joint Commissioner (ST)/
Authority for Advance Ruling, Tamil Nadu, Chennai-600 003.

ORDER No. 08/AAR/2022 DATED: 28.02 .2022

GSTIN Number, if any / User id		33AADCL1959K1ZC
Legal Name of Applicant		M/s. Lagom Labs Private Limited
Registered Address/Address provided while obtaining user id		715A, 7 th Floor, Spencer Plaza, Mount Road, Anna Salai, Chennai, Tamil Nadu, 600 002.
Details of Application		GST ARA- 01 Application Sl.No.27/2021 ARA dated: 23.08.2021
Concerned Officer		State: Assistant Commissioner(ST) Annasalai Assessment Circle, Centre: North Commissionerate.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Retail Business
B	Description (in Brief)	
Issue/s on which advance ruling required		Classification of goods and/or services or Both.
Question(s) on which advance ruling is required		Whether the Cramp comfort patch are to be classified under Chapter Heading 3004 attracting 12% GST under serial no. 63 or Chapter Heading 3005 attracting 12% GST under serial no. 64 in Schedule II of Notification 01/2017 – Central Tax (Rate) dated 28 June 2017 and under Serial No: 63

	or 64 of Schedule II of Notification G.O. (Ms) No. 62 (NO.II(2)/CTR/532(D-4)/2017) TNGST (Rate), dated 29.06.2017, if not what would be the appropriate classification and justification for such classification?
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Note: Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

M/s. Lagom Labs Private Limited, 715A, 7th Floor, Spencer Plaza, Mount Road, Anna Salai, Chennai, Tamil Nadu, 600 002. (hereinafter called the Applicant) is registered under the GST Vide GSTIN 33AADCL1959K1ZC. They have sought Advance Ruling on the following question:

Whether the Cramp comfort patch are to be classified under Chapter Heading 3004 attracting 12% GST under serial no. 63 or Chapter Heading 3005 attracting 12% GST under serial no. 64 in Schedule II of Notification 01/2017 – Central Tax (Rate) dated 28 June 2017 and under Serial No: 63 or 64 of Schedule II of Notification G.O. (Ms) No. 62 (NO.II(2)/CTR/532(D-4)/2017) TNGST (Rate), dated 29.06.2017, if not what would be the appropriate classification and justification for such classification?

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The Applicant has stated that they are engaged in supply of various women wellness products such as sanitary pads, value kits which include various products, multipurpose pouch to fit daily essentials, liners and 'Cramp Comfort' which are heat patches for period pain, under the brand name 'Nua'. They have stated that in August 2020 they have launched a new product 'Cramp Comfort' which is a heat

patch used by women during period pain. The Cramp Comfort patches are air activated and emits heat upon contact with the atmosphere. It relaxes muscles and ensures smooth passage of blood flow during the monthly cycle. These products are available to purchase online at 'www.nuawoman.com' as well as other e-commerce platforms such as www.Amazon.in etc.

2.2 The Applicant has stated that they discharge GST on the sale of 'Cramp Comfort' at 12% (i.e., 6% as Central GST ('CGST') and 6% as Tamil Nadu State GST ('TNGST')) under HSN – 3004 - Medicaments (excluding goods of heading 30.02, 30.05 or 30.06) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale, including Ayurvedic, Unani, homoeopathic siddha or Bio-chemic systems medicaments, put up for retail sale as per serial no. 63 in Schedule II of Notification 01/ 2017 – Central Tax (Rate) dated 28 June 2017. They have also stated that they have complied with provisions of Section 37 of Central Goods and Services Tax Act 2017 and Tamil Nadu State Goods and Services Tax, Act 2017 and have been duly filing GSTR 1 and GSTR 3B. They have submitted copy of the returns for the month of March 2021.

2.3 On interpretation of law, in order to classify their product under HSN 3005 the applicant has stated that their product Cramp Comfort is a heat patch which facilitates alleviation of muscle cramps through emission of heat. The product consists of ingredients such as iron powder, activated carbon, vermiculite, salt and water absorber. The ingredients are filled in a triangle-shaped patch made of non-woven fabric which consists of an adhesive layer on one side. The product is air activated and once the product is unpacked and affixed to the lower abdomen of women, the heat gets emitted on contact with the atmosphere. The effect of the product lasts for the duration of 8 hours post which the patch has to be disposed off. The applicant has referred to Sl.No 64 of Notification 01/2017, wherein the description of goods under HSN 3005 falls under at 12% GST. They have extracted the details of description of goods under HSN 3005 viz. as below:

- i. Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices),
- ii. Impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes.

They have stated that in order to merit classification under heading 3005, either of the below two conditions must be fulfilled.

- The first condition is impregnated or coated with pharmaceutical substance.
- The other condition required to be fulfilled is that the product should be put up in form or packing for medical, surgical, dental or veterinary purposes.

2.4 The applicants understanding on the description of goods under HSN 3005 is as below:

Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices).

They have stated that the first part of the description emphasizes on the design of the product. They have referred to the following definitions as per the Oxford Dictionary –

- i. A 'wadding' is a soft material that you wrap around things to protect them.
- ii. A 'gauze' is a type of thin cotton cloth used for covering and protecting wounds.
- iii. A 'bandage' is a long narrow piece of cloth used for tying around a part of the body that has been hurt in order to protect or support it. Further, the term 'hurt' is defined as to cause physical pain to somebody/ yourself; to injure somebody/ yourself.

They have stated that as per the legal doctrine of *ejusdem generis*, the term 'similar articles' should be interpreted bearing cognizance to the preceding terms. The applicant has referred to case of Siddeshwari Cotton Mills Private Limited vs Union of India (1989), wherein, the Hon'ble Supreme Court has provided a detailed account on the doctrine ejus-dem-generis. The applicant has stated that in the instant case similar articles should mean goods that are used to bind, cover or protect a part of the body and which are predominantly used for medical or healthcare purpose. They have further stated that in the perspective of interpretation of statutes, the term similar articles may be considered as specifically in relation to bandages as there is no 'comma' inserted after the word bandages and to substantiate their contention the applicant has relied on the following case laws emphasising on the importance of punctuation marks while interpreting statutes

- TCS E-service Limited vs. CST, Mumbai II (2013 - CESTAT Mumbai) wherein the Tribunal.
- Mohd. Shabbir vs. State of Maharashtra (1979 1 SCC 568).

In view of the above case laws, the applicant has stated that the term similar articles may be construed as in relation to Bandages, in absence of a comma before the term 'and similar articles'. As their product Cramp comfort is by design a patch of non-woven fabric that emits heat to soothe and relax muscles to ensure smooth passage of period blood, it should fall within the ambit of 'similar articles'.

2.5 The applicant has stated that the second part of the description Impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes emphasizes on the nature and use of the product. They have referred to the following case laws, wherein the Supreme Court has held that internationally accepted HSN Explanatory notes may be used as a guide for classification of goods:

- Collector of Central Excise, Shillong vs. Wood Craft Products Ltd. [1995 (77) ELT 23 (SC)]
- L.M.L. Ltd. vs. Commissioner of Customs [2010 (258) E.L.T. 321 (S.C.)]

The Applicant has also relied upon the nomenclature and explanatory notes issued by the World Customs Organization (WCO) for HSN 3005 in this regard and stated that the description of goods classifiable under the heading 3005 as per Notification 01/ 2017 is *pari-materia* with the description mentioned by WCO

2.6 They have also stated that the term retail sale has not been defined in the GST law or rules. It is a well settled principle of interpretation of statute that the word not defined in the statute must be construed in its popular sense, meaning 'that sense which people conversant with the subject matter with which the statute is dealing would attribute to it'. It is to be construed as understood in common language. The applicant has relied on the decision of the Hon'ble Supreme Court in following cases:

- *Indo International Industries v. CST* (1981) 47 STC 359.
- *Oswal Agro Mills Ltd. v. Collector of Central Excise* [1993 (66) ELT 37].
- *CCE v. Connaught Plaza Restaurant (P.) Ltd.* [2014] 52 taxmann.com 531,

They have further drawn inference from the case of *M/s. Shanti Surgicals Private Limited vs. Joint Commissioner* [2009 (3) TMI 868]. They have stated that the retail packs of the product Cramp Comfort are not re-packed before being sold to individual customers for use. Therefore, the the product Cramp comfort is an article which is sold in retail packs to individual customers and is intended for "medical"

purpose by relaxing and alleviating the muscle cramp. They have also submitted that the word 'medical' is not defined in the GST law or rules made thereunder and as per the Oxford dictionary, the term 'Medical' means connected with illness and injury and their treatment. 'Illness' has been defined as the state of being physically or mentally ill. *The American Heritage Medical Dictionary by Houghton Mifflin Company, published by Houghton Mifflin Company in 2008* has defined 'Illness' as poor health resulting from disease of body or mind. They have stated that in the instant case, the period cramp may be construed as 'Illness' as monthly period affects the body of a woman in many physical ways from bloating to cramps and also includes mood swings. The period cycle itself leaves a woman mentally and physically drained. The physical consequences of the menstrual period is the menstrual pain or cramps which are the pains in the lower abdomen. This pain may continue for 2 or 3 days. These cramps may be throbbing or aching and they can be dull or sharp. The symptoms can range from a mild discomfort to serious pain that interferes with your normal activities. The menstrual period also results in emotional consequences in addition to the physical discomfort. *The Mental Health America* has conducted webinars and has also released a material titled *Chronic Menstrual Pain: Physical and Emotional researched and presented by Uma Lerner, MD a Reproductive Psychiatrist*, wherein it is evident that when pain is high and sustained it affects brain areas involved in emotion, cognition and motivation. Hence, the applicant is of the view that the menstrual period is a kind of an illness, a poor health condition resulting from a discomfort in body and/or mind.

2.7 The Applicant has also submitted that the ingredients such as iron, vermiculite clay, activated carbon and salt are used in the Cramp Comfort patch and these substances in the Cramp Comfort patch results in lowering abdomen pain relief during the menstrual period. Although these ingredients are not directly called as pharmaceutical substances, the ingredients are used as a substance having therapeutic properties and hence construed as pharmaceutical substances. They have stated that Iron is an important mineral which has been used in various pharmaceutical substances. Similarly Vermiculite is a hydrous phyllosilicate mineral which undergoes significant expansion when heated, which is commonly called as 'clay mineral' and constitutes a sub-group 'Phyllosilicate' and are widely used in the pharmaceutical industry as lubricants, desiccants, disintegrants, diluents, binders, pigments and opacifiers, as well as emulsifying, thickening, isotonic agents, and anticaking

agents, and flavour correctors and carriers of active ingredients. A variety of minerals are used as excipients. Excipients are inactive substances that serve as the vehicle or medium for a drug or other active substance. Excipients are largely used in pharmaceutical preparations because they have certain desirable physical and physico-chemical properties, such as high adsorption capacity, specific surface area, swelling capacity, and reactivity to acids. Phyllosilicates are commonly used as excipients in the pharmaceutical industries. Phyllosilicates are clay minerals of the Vermiculite group. Therefore, iron and vermiculite clay are accepted minerals in the production and manufacture of pharmaceutical substances. The applicant has placed reference on the following:

- *Handbook of Clay Science, Second Edition Part B: Techniques and Applications Minerals edited by Faiza Beragya and Gerhard Legaly, published by Developments in Clay Science)*
- *Applied Clay Science an International journal on fundamental research and the Applications of Clays and Clay Minerals edited by Yuan Peng, Guangzhou Institute of Geochemistry, Guangzhou, China and Maria Victoria Villar, Research Centre for Energy Environment and Technology, Madrid, Spain – Volume 210 September 2021*
- *Excipient development for pharmaceutical, biotechnology and drug delivery systems authored by Ashok Khatdare, Mahesh Vijay Chaubal published by New York: Informa Healthcare- 2006 edition*

Further they have submitted that it may not be an essential requirement that all bandages are to be covered/coated with pharmaceutical substance. In support of this view, they have placed reliance on the following decisions:

- *Johnson & Johnson Ltd. v. CC, Bombay 1999 (105) ELT 177 (Tribunal)*
- *Dr. Sabharwal's Bulk Drugs Ltd. v. CCE 2000 (119) ELT 634 (Trib. - New Delhi)*

Further, they have also relied on judgements pronounced by *First-Tier Tribunal Tax Chamber* in the case of *Pfizer Consumer Healthcare Limited vs. the Commissioners for Her Majesty's Revenue and Customs [2019 UKFTT 93 (TC)]*, in relation to the classification of a product- 'Thermacare' which is used for the purpose of heat therapy to deliver benefits such as analgesia, reduced stiffness and acceleration of healing to damaged tissue. The applicant has stated that it is pertinent to note that legal principles for determining the classification of goods, inter alia prescribe the following key tests:

- The commercial parlance test – which refers to the understanding of those who buy and sell the product in question, in the course of trade. The said test was highlighted in the case of *Real Optical Co. vs. Appellate Collector of Customs* [2001 (129) E.L.T. 7 (S.C.)].

They have also submitted that the suppliers of similar products pertaining to various Chinese brands have listed the products under the heading 3005 on their website. In view of the aforementioned facts, they have submitted that the product Cramp Comfort should be classified under heading 3005.

2.8 The applicant has submitted the following facts to merit classification under the heading 3004 attracting 12% GST in terms of serial no. 63 in Schedule II of notification 01/ 2017 – central tax (rate) dated 28 June 2017. They have submitted that the product is currently sold under the HSN 3004 by them. The Heading 3004 of the Customs Tariff Act covers 'medicaments'. The term 'medicament' is not defined in the Customs Tariff Act. Thus, it is apposite to refer to the dictionaries to ascertain the natural meaning of expression 'medicament'. The definition of the term 'medicament' as obtained from various sources is as under:-

- The term 'medicament' refers to a substance relating to medicine. The term 'medicine' has been defined in **Concise Oxford English Dictionary [12th Edition (2011), Oxford University Press**, refer page 888] as practice of diagnosis, treatment or prevention of a disease; and
- In the case of **Sujanil Chemo Industries v. CCE 2005 taxmann.com 842 (SC)** (Full Bench: 3 Judges), the Apex Court held that the term refers to a product comprising of two or more constituents which have been mixed or compounded together for therapeutic or prophylactic use.

The above definitions reveal that 'medicaments' include substances of prophylactic use. Simply put, substances used to prevent diseases are covered within the scope of expression 'medicaments'. Their product i.e., Cramp Comfort patch aids in preventing the lower abdomen pain which is commonly called as menstrual pain and thus would be covered under the scope of the expression 'medicament'. Menstrual cramps is the synonym of Dysmenorrhea. Dysmenorrhea is a common condition that occurs in 52%, 72% or even 90% of adolescent girls. While most adolescent girls experienced minor pain during menstruation, dysmenorrhea is diagnosed when pain is too severe as to limit normal activities or required medication. The applicant has

referred to the definition of Dysmenorrhea and has also furnished the description of Dysmenorrhea including its causes, symptoms, treatment etc., in detail. Further, they have stated that in recent years, some studies aimed to improve the treatment of dysmenorrhea and therefore introduced several therapeutic measures. Heat applied to the painful area may bring relief, and a warm bath twice a day also may help. Several researches has effectively concluded that Heat patch containing Iron chip has comparable analgesic effects to ibuprofen and can possibly be used for primary dysmenorrhea. Therefore, many women also seek alternative therapies, such as heating pads for cramps, to manage their menstrual discomfort. A recent systematic review suggested that heat therapy may be related to pain reduction. They have also referred to following research papers:

- Iacovides, S., Avidon, I. & Baker, F. C. What we know about primary dysmenorrhea today: a critical review. *Hum Reprod Update* **21**, 762–778 <https://doi.org/10.1093/humupd/dmv039> (2015).
- Igwea, S. E., Tabansi-Ochuogu, C. S. & Abaraogu, U. O. TENS and heat therapy for pain relief and quality of life improvement in individuals with primary dysmenorrhea: A systematic review. *Complement Ther Clin Pract* **24**, 86–91 <https://doi.org/10.1016/j.ctcp.2016.05.001> (2016).
- Comparing the analgesic effect of heat patch containing iron chip and ibuprofen for primary dysmenorrhea: a randomized controlled trial. Authored by Navvabi Rigi S, Kermansaravi F, Navidian A, Safabakhsh L, Safarzadeh A, Khazaian S, Shafie S, Salehian T. Pregnancy Health Center, Zahedan University of Medical Sciences, Zahedan, Iran.
- The effects of local low-dose heat application on dysmenorrhea - Dilek Coşkuner Potur and Nuran Kömürcü faculty of Health Sciences, Division of Nursing, Department of Obstetrics and Gynecology Nursing, Marmara University, Istanbul, Turkey
- Continuous low-level topical heat in the treatment of dysmenorrhea Akin MD, Weingand KW, Hengehold DA, Goodale MB, Hinkle RT, Smith RP - Health Quest Therapy and Research Institute, Austin, Texas, USA

2.9 In view of the above facts, the applicant has submitted that menstrual cramps called as Dysmenorrhea an illness or a disease are throbbing or cramping pains in the lower abdomen. Heat patches such as Cramp Comfort patches of Applicant works by relaxing the muscles in the uterus without increasing blood flow and ease the pain on during cramps. By using these heat patches, one can feel relief cramps

up to 8 hours. Heat patches are thin, comfortable and easy to use. Lower abdomen cramp forms the cause of disease called Dysmenorrhea. The Applicant further relied on HSN Explanatory Notes of Chapter Heading 3004 wherein it is clear that this heading covers medicaments consisting of mixed or unmixed products, provided they are:- In packings for retail sale for therapeutic or prophylactic use. This refers to products (for example, activated carbon, salt, iron and vermiculite clay) which, because of their packing and, in particular, the presence of appropriate indications (statement of disease or condition for which they are to be used, method for use or application, statement of dose, etc.) are clearly intended for sale directly to mass (private persons, hospitals, etc.) without repacking, for the above purposes. These indications (in any language) may be given by label, literature or otherwise. However, the mere indication of pharmaceuticals or other degree of purity is not alone sufficient to justify classification in this heading. On the other hand, even if no indications are given, unmixed products are to be regarded as being put up for retail sale for prophylactic use if they are put-up in a form clearly specialised for such use. This heading also excludes Insecticides, disinfectants, etc. of heading 38.08, not put-up for internal or external use as medicines. From perusal of HSN Explanatory Notes, Chapter Heading 3004 primarily includes products which fulfil the following criteria:-

- a) They are sold in packings for retail sale, and

From the retail packaging of the product Cramp comfort, it clearly indicates, the disease or condition for which they are to be used, method of use, statement of use etc. Thus, the first criteria are fulfilled by the Applicant.

- b) They are put up in form clearly specialized for therapeutic or prophylactic uses.

Regarding the second condition of Cramp Comfort patch having 'therapeutic' or 'prophylactic' properties, the applicant has submitted that the expression 'therapeutic' or 'prophylactic' has not been defined either under the Central Excise Tariff Act, 1975 or Explanatory Notes to HSN. Here, reliance is placed on the decision of the Supreme Court in the case of ICPA Health Products (P.) Ltd. v. CCE 2004 taxmann.com 745, wherein the Court after noting the meaning of the word 'prophylactic' from Concise Oxford Dictionary, 9th Edition., held that the expression prophylactic means a "medicament intended to prevent diseases, a preventive medicine or course of action". Therefore, from the above, products qualifies as prophylactic product.

Since the product is used to reduce pain caused by Dysmenorrhea and provide relief to the users, the product could be classified under the HSN 3004 9099 as other medicaments used for therapeutic use. This makes amply clear that any product which is intended to prevent against the diseases and has therapeutic properties is to be classified under chapter 3005 or 3004. The applicant had required a suitable ruling on the classification of the product under HSN 3004 or HSN 3005.

3.1 Due to the prevailing PANDEMIC situation and in order not to delay the proceedings, the applicant was addressed through the Email Address mentioned in the application to seek their willingness to participate in a virtual Personal Hearing in Digital media. The applicant consented and the hearing was held on 09.11.2021. The Authorised representative Shri Harish Bindumadhavan Putti appeared for the hearing virtually and reiterated the written submissions. He stated that the ruling sought is on the classification and applicable rate of the product 'Cramp patch'. He stated that the packaging of the product consists of measured doses of ingredients i.e. iron powder, activated carbon, vermiculite, salt, water absorber, for external therapeutic use and merits classification under CTH 3004. In respect of merits for seeking classification under CTH3005, the authorized representative stated that the product being an adhesive patch with impregnated pharmaceutical substance is a type of plaster. To a query by the members, that

- i. When there is no transfer of medicine how is the product called a Medicament
- ii. To be classified under 3005, the product is not a plaster but an expandible bag.

the Authorised representative stated that the product is not a medicine but a heat patch containing natural products and pharmaceutical substance, vermiculite. He stated that the product is for dysmenorrhea as a therapeutic use and the word 'Medicament' should not have restricted meaning but include products for Therapeutic/Prophylactic use. They are currently classifying under CTH 3004. The Authorised representative was asked whether they have a license to manufacture the product when he states that the ingredients are in a measured dosage, for which he stated that no drug license is required and the product is intended for use for secondary dysmenorrhea only. They were asked to produce samples and a detailed write up on the product with the proportionate ingredients.

3.2 The applicant vide their letter dated 23.11.2021 submitted sample of the product and a technical write up. The facts submitted by the applicant in the write up is as below:

The product specification is provided as under:

Sl.No:	Attributes	Ideal	Margins
1.	Shape	2 compartments – triangle-shaped	0
2.	Weight	35g	+/- 5 g
3.	Dimensions	L: 21.0 cm B: 10.29 cm	+/- 0.5 cm
4.	Temperature	47 degree max	+/- 4 degrees
5.	Duration	7+ hours	
6.	Rate of Activation	30 minutes after exposure	
7.	Shelf life	2 years	
8.	Ingredients	Iron powder, activated carbon, vermiculite, salt, water absorber	
9.	Front nonwoven GSM	105	+/- 15
10.	Back nonwoven GSM	90	+/- 15
11.	Nonwoven healing temperature	100 degree celsius	
12.	Front nonwoven grade	PP, PE warmer grade	
13.	Back nonwoven grade	PP, PE warmer grade	
14.	Glue type	Hot melt base	
15.	Glue trade	Pressure sensitive adhesive	

➤ The Cramp Comfort (heat) patches are used to reduce the lower abdomen pain caused by Dysmenorrhea a medical symptom observed during the menstrual period. The heat patches are used for treating physical and mental illness caused due to the medical condition called Dysmenorrhea. The natural ingredients such as iron, vermiculite clay are minerals used as therapeutic materials are construed as pharmaceutical substances providing relief to the pain caused due to Dysmenorrhea.

➤ The Cramp comfort patch is biodegradable and the pouch consists of iron powder, salt activated carbon and vermiculite clay. The patch is also water absorbent. The iron powder and other ingredients are contained in a blended

nonwoven material that has specific permeability characteristics. If the pouch admits more oxygen, the reaction occurs more quickly.

- The chemical and medicinal purpose of each ingredient used in the product is described as under:

Ingredients	Concentration ranges (in %)	Chemical purpose	Medicinal purpose
IRON POWDER	50-60	Iron powder is used instead of a chunk of iron as the large surface area of the fine powder greatly speeds up the oxidation reaction. Chloride ions in salt act as catalysts to further accelerate the oxidation. In the presence of Chloride ions, the formation of a more porous form of rust is favored.	The use of high purity iron has made it possible to produce active pharmaceutical ingredients and bulk drugs. The iron powders act as a reducing agent in pharmaceutical reaction. All the medicines are made using specific formulations. To achieve the precise structures the materials, need to have a certain level of purity, size, and chemical as well as physical properties. The high purity iron with different particle sizes are highly reactive and fit into all the parameters. Therefore, its use in the pharmaceutical industry has prominently grown. Since iron is becoming more and more green products, it helps as eco-friendly mineral to various health applications worldwide.
ACTIVATED CARBON	5-10	Activated carbon facilitates the dispersion of heat and helps to bring oxygen to the iron particles through gas adsorption	Activated carbon is a processed form of carbon that is very porous. This means it is covered in millions of tiny pores that can absorb surrounding minerals. In other words, it has the ability to soak up and trap the compounds it comes into contact with. For this reason it is used by the pharmaceutical industries to extract air particles and other compounds used for pharmaceutical substances.
VERMICULITE CLAY	5-10	Vermiculite is an inert light-weight mineral that maintains an optimal moisture level for rusting of iron to	Vermiculite clay is widely used in the pharmaceutical industry as lubricants, desiccants, disintegrants, diluents, binders, pigments and opacifiers, as well as

		occur.	emulsifying, thickening, isotonic agents, and anticaking agents, and flavour correctors and carriers of active ingredients.
SALT	1-5	Sodium Chloride is used as a catalyst in the reaction that accelerates the exothermic reaction, meanwhile, the activated carbon's role is to store the heat generated by the iron powder. This mixture generates a larger amount of heat compared to that of the single component iron powder	Sodium chloride is used in the prevention or treatment of deficiencies of sodium and chloride ions and in the prevention of muscle cramps
WATER ABSORBER	30-40	The heat patches emit heat (so its atoms vibrate really fast) and touch it to the abdomen which is something colder (whose atoms are vibrating more slowly). Then as the atoms in the hotter object vibrate, they'll hit the atoms in the colder object, and make them start vibrating more. As this happens, the hotter object cools down, and the cooler object warms up. This is how, say, water in a pot on a stove absorbs heat: the stove heats up the bottom of the pan, and that heat is conducted into the water in the pot.	Water is also the lubricant that helps in the smooth movement of our joints and allows their surfaces to slide and glide with minimal friction.

4.1 Further, as the applicant requested for another hearing they were given another opportunity to be heard in digital mode on 20.01.2022. The Authorised

Representatives Shri Harish Bindumadhavan Putti and Shri Neil Killawala appeared for the hearing virtually and reiterated their earlier submissions. They stated that presently they are classifying under CTH 3004. When asked about the reference to the 'First Tier Tribunal decision & CTH 3824 in their submissions, they stated that their product cannot be covered under CTH 3824; the individual components are used in Pharma Industry as 'Medicaments' and it is for transdermal application, requiring no license under 'Drug and Cosmetics Act. They were asked to substantiate with legal provisions that their product is a medicament, put up with ingredients in 'measured doses', and do not require approval/license under Drugs & Cosmetics Act. They were asked to furnish the Manufacturer's Invoice/ Import invoice for the product. When asked whether any Investigations by any Tax Authorities with the manufacturer of the product/their registrations in other States, they replied that there is no investigation/summons issued.

4.2 The applicant vide their email dated 11.02.2022 has submitted the following documents as required in the hearing held on 20.01.2022. They have also submitted that they do not have any import purchases for the product. In the reply, they have inter-alia, stated that:-

The Advance Ruling Authorities directed the applicant to furnish the following data:

- a. Whether the applicant is granted the license under Drug and Cosmetic Act, 1940
- b. Whether the ingredients are added into the patch in doses?
- C. Copy of the import invoices
- d. Copy of the job work/manufacturer's

In response to the aforesaid information sought, the applicant has submitted the following details:

- Cramp Comfort patches fall under the purview of drugs in terms of Drugs and Cosmetics Act, 1940
- The Cramp Comfort patches sold by them fall very much within the definition of drugs and cosmetics Act 1940, under Section 3(b)(iv) of the Drugs and Cosmetics Act 1940 and in the absence of any provision in the CGST Act 2017 and TNGST Act 2017 to the contrary it was to be accepted that the said product may be "drugs" within the meaning of the Act. The applicant submits that the definition of 'drug' under the Section 3(b) of the Drug and Cosmetic Act, 1940 includes as under:

- i. all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings or animals, including preparations applied on human body for the purpose of repelling insects like mosquitoes;
 - ii.....
 - iii.....
 - iv. such devices intended for internal or external use in the diagnosis, treatment, mitigation or prevention of disease or disorder in human beings or animals, as may be specified from to time by the Central Government by notification in the Official Gazette, after consultation with Board;
- The applicant has submitted that the definition of 'drugs' in section 3(b) is comprehensive enough to take in not only medicines but also substances intended to be used for or in the treatment of diseases of human beings or animals. The expression "substances" must be something that possess medicinal usage other than medicines which are used for treatment. The part of the definition which is material for the present case is "substances intended to be used for or in the treatment". The appropriate meaning of the "substances" in the section is "things". The articles had to possess those qualities which are utilised in the treatment of diseases. The predominant use of cramp comfort patches are to alleviate the pain in the abdomen caused due Dymenorrhea and its specific purpose has been abundantly sought to be made out on the aspect of abdomen pain relief during the menstrual cycle in women. Cramp Comfort patches are thus essentially items used for prophylactic purpose which in other words means preventive treatment or medicine.
 - Regarding clarification as to the applicant has obtained a license under Drugs and Cosmetics Act 1940. In this regard, the applicant has submitted that there is no mandate for all the drugs/medicines to obtain license under the Drugs and Cosmetics Act 1940. Further the Cramp Comfort patches are those product which does not require prescription from the general physician or a chemist or any Registered medical practitioner. The product is a non-prescription drug or an Over-the- counter(OTC) drug.
 - They have submitted that the term "over-the-counter medicines" are OTC unless they are specifically stated as prescription only drugs. OTC medicines

or nonprescription medicines are terms used interchangeably to refer to medicines that can be bought without a prescription. Many countries recognize OTC medicines as a separate category of drugs and have established regulations for their use. In India, till date there are no guidelines for licensing of OTC medicines. There is no separate category allotted for OTC medicines in India and the drugs which do not come under the prescription medicines schedule are generally sold as over-the-counter medicines.

- the medicines are listed under different schedules in the Drugs and Cosmetics Act and Drugs and Cosmetics Rule. Drugs listed in Schedules H, H1, and X should carry a label stating that these drugs are to be sold by retail only on prescription of a registered medical practitioner. The listed in Schedule G (mostly antihistamines) must carry a mandatory text on label stating, "Caution: it is dangerous to take this preparation except under medical supervision." In this regard the applicant has submitted that certain important drug categories such as diuretics and aminosalicylates, sulfasalazine, mesalamine) are not included under any drug schedule creating a confusion for pharmacists whether to sell these drugs as OTC or prescription medicines.
- The term OTC is used for the way drugs are used (self medication without prescription or allowed to be sold by pharmacists without prescription of a Registered Medical Practitioner) rather than being an official category of medicines. The medicines which do not fall under the category of schedule H, H1, and X can be given without prescription through pharmacists and drugstores.
- Rule 65 of the Drugs and Cosmetics Rules, 1940 specified in certain schedules such as Schedule H and H1 or Schedule X are required to be sold (by retail) in accordance with the prescription of a registered medical practitioner and, in the case of substances specified in certain schedules such as Schedule X, the pharmacists are required to keep a copy of the prescription for a period of two years. In contrast, OTC drugs are not defined as a distinct category of drugs. Though not regulated separately, OTC drugs are still categorised as a "drug" and, therefore, the manufacture, import and sale of OTC drugs is regulated under the Drug and Cosmetics Act, 1940 and Drug and Cosmetics Rules.
- Therefore, there is no such drug license obtained under Drug and Cosmetics 1940 by the applicant for the sale of cramp comfort patches. The applicant

has further submitted that grant of drug license under drug and cosmetics Act 1940 is not mandatory pre-requisite condition under the GST Tariffs for classification of product under the specific HSN Code. Also, grant of license obtained under other statutory enactment other than Indirect tax laws neither alters the nature and medicinal use of the product nor determines right the classification under HSN code 3004 or 3005 of the CGST Act 2017 and TNGST Act 2017

- The Cramp comfort patches consists of the composition as under:
composition/contents of the product*

Chemical Name	CAS No:	*Concentration/Concentration ranges (wt %)
Water absorber	7732-18-5	30-40
Iron Powder	7439-89-6	50-60
Activated charcoal	7440-44-0	5-10
Vermiculite	1318-00-9	5-10
Sodium chloride	7647-14-5	1-5 *

*This product consists of the non-woven fabric and the heating element. Exact concentrations have been withheld as they are proprietary trade

- The applicant has furnished copies of Invoices from Vendor named M/s. Pantheon Pharmchem, Palghar, Maharashtra
- Copies of Invoices from the Applicant to the branch entity M/s. Lagom Labs Pvt Ltd-TMN located in Tamilnadu

5.1 The State Jurisdictional Authority who has the administrative Jurisdiction over the applicant has furnished the following comments:

The Comfort patch is to be classified under Chapter Heading 3005 attracting 12% GST under Serial No. 64 more than the Chapter Heading 3004 attracting 12% GST under serial No.63 in schedule II of Notification 01/2017 – Central Tax (Rate) dated: 28.06.2017. The reasons stated for the above view is that as per the documents submitted by the dealer, the ingredients such as Iron, Vermiculite clay, activated Carbon and Salt are filled in a triangle shaped patch made of non-woven fabric which consists of an adhesive layer on one side. The Comfort patch is used to reduce pain during the Menstrual Period. It is also further stated that, these above points mostly related to Chapter Heading 3005 attracting 12% GST under serial No. 64 (which includes wadding, gauze, bandages and similar articles impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale

for medical, surgical, dental and veterinary purposes) than the Chapter Heading 3004 attracting 12% GST under serial No. 63. The Applicant has stated that they have filed GSTR 1 and GSTR3b at 12% under HSN 3004 as per serial Number 63. Also, no revenue loss may arise to the State and Central Exchequer (the rate of Tax will be same @ 12%), even if the product is classified under HSN 3005 serial Number 64. Hence, in view of the above facts the product Comfort patch may be classified under HSN 3005 as per serial Number 64 in schedule II of Notification 01/2017 – Central Tax (Rate) dated: 28.06.2017 and Serial No. 64 of Schedule II of Notification G.O. (Ms) No.62 (No.II(2)/ctr/532(D-4)/2017) TNGST (Rate), dated: 29.06.2017 or else the above product may also be classified under HSN 96190090 which includes the products like sanitary towels (pads) or sanitary napkins, tampons, napkins and napkin liners for babies and clinical diapers, which are also Taxable at 12% of GST (CGST 6% and SGST 6%) in this case also No revenue loss may arise to the Government.

5.2 The Central Jurisdictional authority has stated that there is no pending proceedings in respect of the applicant on the questions raised. They have further opined that the applicant's product cannot be classified under the heading 3004 as it is clear from the Notification 01/2017 Ct(rate) that only medicaments used for therapeutic or prophylactic purposes are covered under the heading. Further, the applicant's product may be classified under heading 3005. On perusal of the product details it is appears that the applicants' product is not a sanitary pad which are classified under heading 9619. From the pictorial details given by the applicant in their website it is not clear whether their product is made of non-woven fabric which consist of adhesive layer on one side and any other material to transform heat to the body such, to determine classification as per constituent material. They have stated that to decide whether the product falls under 3005 or 9619 or any heading physical inspection of the product along with technical literature is required.

6. We have considered the application filed by the applicant, samples and various submissions made by them as well as the comments of the State and Central Tax officers. The applicant is engaged in supply of various women wellness products such as sanitary pads, value kits which includes cramp comfort which are heat patches for period pain. The Cramp Comfort patches are air activated and emits heat upon contact with the atmosphere. It relaxes muscles and ensures smooth passage of blood flow during the monthly cycle. These products are available to purchase online at 'www.nuawoman.com' as well as other e-commerce platforms such as www.Amazon.in etc. They have sought Advance Ruling on the following question:

Whether the cramp comfort patch are to be classified under Chapter Heading 3004 attracting 12% GST under Sl.No.63 or Chapter Heading 3005 attracting 12% GST under Sl.No.64 in Schedule II of Notification 01/2017-CT(rate) dated 28th June 2017 and under Sl.No.63 or 64 of Schedule II of Notification G.O (Ms) No.62[No.II(2)/CTR/532(D-4)/2017] TNGST(Rate) dated 29.06.2017, if not what would be the appropriate classification and justification for such classification.

The issue raised before us is to determine the classification of the product 'cramp comfort' being supplied by the applicant and therefore, admissible before this authority for consideration on merits. Accordingly, the application is taken up for consideration on merits.

7.1 From the submissions of the applicant, it is seen that the applicant in August 2020, launched 'Cramp Comfort', which is a heat patch used by women during period pain. They claim that the product has prophylactic uses and is used as an alternative therapy to manage their menstrual discomfort/ secondary dysmenorrhea. The applicant has furnished the technical write-up of the product and the following tax invoices:

- i. Tax invoice number 100698617 dated 11.05.2021 raised by Lagom Labs Maharashtra, on Sweta Jha and the product is classified under the heading 30049099
- ii. Tax invoice raised by Pantheon Pharchem vide No. W/RET/0047/20-21 dated 13.12.2020; W/RET/002/21-22 dated 04.04.2021 & W/RET/0069/21-22 dated 31.10.2021 on Lagom Labs, Mumbai. In all these invoices the product, 'Bluheat NUA heat patch (pack of 3); Bluheat NUA Heat Patch (Loose) is classified under the heading HSN 3824
- iii. Invoice no: BTOTMN/012_21-22 dated 12.11.2021 raised by Lagom Labs Pvt Ltd Maharashtra on Lagom Labs Pvt Ltd, Tamil Nadu, the product, 'Heat Patch-(Pack of 3)' is classified under the heading 3005 1090

On perusal of the above invoices furnished by the applicant, it is seen that the product 'Bluheat NUA heat Patch' is received by Lagom Labs, Mumbai, wherein the classification of the product is HSN 3824. The invoice raised on the ultimate consumer by the Lagom Labs Mumbai, classify the product under HSN 3004 and the product is classified under HSN 3005 in the invoice raised by Lagom Labs, Mumbai on the applicant. Thus it is seen that the applicant has not furnished any invoice for the supply of the product made by them. The Lagom Labs Mumbai has classified

under HSN 3005 while supplying to the applicant. The products are classified under HSN 3824 by the Vendor of the products to Lagom Labs, Mumbai. The applicant during the hearing dated 09.11.2021 has submitted that they are currently classifying the product under the heading 3004. Thus it is seen that the product stands classified under CTH 3824; CTH 3004; CTH 3005. It is the view of the applicant that the product merits classification under CTH 3004 in as much as the product is for therapeutic/prophylactic use or under CTH 3005, 'as similar articles' in as much as the product is an adhesive patch with impregnated pharmaceutical substance.

7.2 In terms of explanation (iii) and (iv) to Notification No. 1/2017 - Central Tax (Rate) dt. 28-06-2017, tariff heading, sub-heading, heading and chapter shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 and the rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975, including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall be applied for the interpretation and classification of goods. Further HSN being a reliable source based on which Customs Tariff is structured, gives a detailed description of the products classified under a particular heading. Considering all the submissions, the competing CTH headings 3004 or 3005 under which classification is sought is discussed below:

7.3 The entries related to CTH3004 are examined as under:

Tariff Item	Description of goods
(1)	(2)
3004	MEDICAMENTS (EXCLUDING GOODS OF HEADING 3002, 3005 OR 3006) CONSISTING OF MIXED OR UNMIXED PRODUCTS FOR THERAPEUTIC OR PROPHYLACTIC USES, PUT UP IN MEASURED DOSES (INCLUDING THOSE IN THE FORM OF TRANSDERMAL ADMINISTRATION SYSTEMS) OR IN FORMS OR PACKINGS FOR RETAIL SALE
3004 90 99	---- Other

Explanatory notes to CTH 3004 as per HSN is as under:

This heading covers medicaments consisting of mixed or unmixed products, **provided they are :**

- (a) Put up in **measured doses** or in forms such as tablets, ampoules (for example, re-distilled water, in ampoules of 1.25 to 10 cm³, for use either for the direct treatment of certain diseases, e.g., alcoholism, diabetic coma or as a solvent for the preparation of injectible medicinal solutions), capsules, cachets, drops or pastilles, medicaments in the form of transdermal administration systems, or small quantities of powder, ready for taking as single doses for therapeutic or prophylactic use.

The heading also includes measured doses in the form of transdermal administration systems which are generally put up in the form of self-adhesive patches (usually rectangular or round) and which are applied directly to the skin of patients. The active substance is contained in a reservoir which is closed by a porous membrane on the side entering into contact with the skin. The active substance released from the reservoir is absorbed by passive molecular diffusion through the skin and passes directly into the bloodstream. These systems should not be confused with medical adhesive plasters of heading 30.05.

The heading applies to such single doses whether in bulk, in packings for retail sale, etc.; or

- (b) **In packings for retail sale for therapeutic or prophylactic use.** This refers to products (for example, sodium bicarbonate and tamarind powder) which, because of their packing and, in particular, the presence of appropriate indications (statement of disease or condition for which they are to be used, method of use or application, statement of dose, etc.) are clearly intended for sale directly to users (private persons, hospitals, etc.) without repacking, for the above purposes.

These indications (in any language) may be given by label, literature or otherwise. However, the mere indication of pharmaceutical or other degree of purity is not alone sufficient to justify classification in this heading.

On the other hand, even if no indications are given, unmixed products are to be regarded as being put up for retail sale for therapeutic or prophylactic use if they are put up in a form clearly specialised for such use.

From the above explanatory notes to heading 3004, it is seen that for a product to be classified under heading 3004 the following conditions are to be satisfied:

The product should be a **Medicament:**

1. Consisting of mixed or unmixed products for therapeutic/Prophylactic use.
2. Put up in measured doses in the form of transdermal administration systems which are generally put up in the form of self-adhesive patches for retail sale and not classifiable as medical adhesive plasters under CTH 3005 .

7.4 In the instant case, the applicant's product 'Cramp Comfort' works by self-heating and for pain relief during the menstrual cycle for women. The product just relieves the pain in the abdomen caused due to menstrual cycle. From the submissions of the applicant, it is seen that the active ingredients used in the product are Water absorber, Iron Powder, Activated charcoal, Vermiculite, Sodium

chloride in specified doses, though the dosages of the components are not certified by any controlling agencies. The applicant has contended that product is for dysmenorrhea as a therapeutic use and the word 'Medicament' should not have restricted meaning but include products for Therapeutic/Prophylactic use. There are many products which are naturally occurring and have therapeutic or prophylactic properties, when used in proper proportions and for particular time periods. The products like neem, turmeric, garlic etc.. all have medicinal value but the same is not considered as medicaments, when they are used as such, without subjecting to any chemical modification. Therefore, merely because a product possesses certain natural therapeutic/prophylactic properties, it cannot be said to fall under the classification of medicaments. The applicant vide their submissions dated 11.02.2022 has contended that their product fall very much within definition of drugs under Section 3(b)(iv) of the Drugs and Cosmetics Act, 1940 and in the absence of any provision defining 'Medicaments' in the GST Act 2017 to the contrary it is to be accepted that the said product may be "drugs" within the meaning of the Act. Sec 3(b)(iv) of the Act provides that

devices intended for internal or external use in the diagnosis, treatment, mitigation or prevention of disease or disorder in human beings or animals, as may be specified from to time by the Central Government by notification in the Official Gazette, after consultation with Board;

In the case at hand, it is not established that the product has been classified as a device specified by the Central Government in any notification and therefore reliance on Section 3(b)(iv), to claim that the product is a 'Medicament' do not help them. It is further seen that the applicant claims the product to be a drug as per Section 3(b)(i), considering the material part of the said section to be 'substances intended to be used for or in the treatment'. It is their claim that the predominant use of the product is to alleviate the pain in the abdomen caused due to Dysmenorrhea and therefore to be considered as a 'drug'. Section 3(b)(i) of the Drugs and Cosmetics Act 1940 states that

All medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings or animals, including preparations applied on human body for the purpose of repelling insects like mosquitoes'

From the above, it is evident that the substances intended to be used for treatment of a disorder is a 'drug' as per this provision. In the case at hand, the treatment for

secondary dysmenorrhea are non-steroidal anti inflammatory drugs(NSAIDs) and the product helps only in reducing the pain and has not been established to be a recommended treatment for the disorder. If the potential of the product to be used as medicament is not clear or established then it cannot be classified under the heading 3004. In this connection, it is pertinent to note that the West Bengal Appellate Authority for Advance Ruling in the case of ESKAG PHARMA Pvt Ltd has observed that “..... .. being prescribed by medical practitioners for a limited period use or sold by pharmacists are not sufficient for the products in question to be classified as Medicaments as per HSN classification in the light of the current Regulations laid down by FSSAI.....”, while classifying a food supplement meant for therapeutic purposes. In view of the above it is evident that the product is not a ‘Medicament’ and therefore do not merit classification under the Heading 3004.

7.5 The next competing heading is 3005, the entries related to CTH3005 are examined as under:

Tariff Item	Description of goods
(1)	(2)
3005	WADDING, GAUZE, BANDAGES AND SIMILAR ARTICLES (FOR EXAMPLE, DRESSINGS, ADHESIVE PLASTERS, POULTICES), IMPREGNATED OR COATED WITH PHARMACEUTICAL SUBSTANCES OR PUT UP IN FORMS OR PACKINGS FOR RETAIL SALE FOR MEDICAL, SURGICAL, DENTAL OR VETERINARY PURPOSES
3005 10	- <i>Adhesive dressings and other articles having an adhesive layer :</i>
3005 10 10	--- Adhesive gauze
3005 10 20	--- Adhesive tape
3005 10 90	--- Other

Explanatory Notes to HSN 3005 states as follows:

This heading covers articles such as wadding, gauze, bandages and the like, of textile, paper, plastic, etc., impregnated or coated with pharmaceutical substances (counter-irritant, antiseptic, etc.) for medical, surgical, dental or veterinary purposes.

These articles include wadding impregnated with iodine or methyl salicylate, etc., various prepared dressings, prepared poultices (e.g., linseed or mustard poultices), medicated adhesive plasters, etc. They may be in the piece, in discs or in any other form.

From the above explanatory notes to Heading 3005 it is evident that the heading covers

- i. wadding, gauze, bandages and similar articles(for example dressings, adhesives, plasters, poultices) impregnated or coated with pharmaceutical substances for medical uses;
- ii. various medicated adhesive plasters, etc which may be in the piece, in discs or in any other form.

The applicant has submitted that the product should fall within the ambit of 'similar articles' as the product is designed as a patch of non-woven fabric that emits heat to soothe and relax muscles during menstrual cramps. In the instant case, the active ingredients of the product are Water absorber, Iron Powder, Activated charcoal, Vermiculite, Sodium chloride which are not pharmaceutical substance, but claimed by the applicant that the product are used for therapeutic purposes. The product is put up in forms for retail sale for prophylactic uses.

7.6 Further, the applicant has made reference to the judgment issued in the case of PFIZER CONSUMER HEALTHCARE VS THE COMMISSIONERS FOR HER MAJESTY S REVENUE AND CUSTOMS, wherein the Commission Implementing Regulation (EU) 2016 classified the Pfizer's product Thermacare under CN code 3824 90 96 and the First Tier Tribunal referred the question to Court of Justice of the European Communities (CJEU). It is seen that the reference made by the First Tier Tribunal stands answered by CJEU vide the Judgment of the court Seventh Chamber on 20.03.2020, wherein the CJEU referring the HSN 3004,3005 and 3824 in connection with 'heat patches' manufactured and supplied by Pfizer has held as under:

49. Thus, in so far as the adjective 'medical' refers to the term 'medicine' and that term may generally be understood, inter alia, as a science to prevent, detect and treat illnesses or injuries, it is appropriate to consider that goods specifically designed to prevent, detect or treat illnesses or injuries relate to 'medical purposes' within the meaning of heading 3005 of the CN.

50 In the present case, that applies to the products covered by Implementing Regulation 2016/1140. As is apparent from their description set out in the Annex to that implementing regulation, those products are intended to relieve pain by generating heat through an exothermic reaction when the cells which they contain are exposed to air. Therefore, this is a form of therapeutic heat therapy, which is recognised as a treatment, given the physiological benefits thus provided.

51 Furthermore, the fact that those products are classified as an 'active medical device' under Directive 93/42 constitutes further evidence in that regard (see, to that effect, judgment of 4 March 2015, Oliver Medical, C-547/13, EU:C:2015:139, paragraph 53).

52 By contrast, there is nothing in the file to suggest that those products are mainly aimed at bringing about aesthetic improvements, which is an indication capable of establishing that they are not intended for medical use (see, to that effect, judgment of 4 March 2015, *Oliver Medical*, C-547/13, EU:C:2015:139, paragraph 52).

53 As regards, in the third place, whether the products covered by Implementing Regulation 2016/1140 can be considered as 'similar articles' to 'wadding, gauze [or] bandages' within the meaning of heading 3005 of the CN, the Commission contests this and submits that the general purpose of the goods classified in that heading is to treat sores or wounds, while the goods at issue in the main proceedings themselves display warnings that they should not be applied to the skin for the purpose of dressing wounds, bruises or swelling.

54 This argument cannot be accepted. The fact that those goods should not be used in some cases does not call into question the finding that they are intended to treat sores or wounds.

55 Consequently, the products covered by Implementing Regulation 2016/1140 fall within heading 3005 of the CN and thus, as is apparent from paragraph 40 of this judgment, do not fall within heading 3824 of the CN.

56 Therefore, those products must be classified in heading 3005 of the CN.

Applying the ratio of the above decision, to the case at hand, it is seen that the product though not notified as a 'medical device' as required under Section 3(b)(iv) of Drugs and Cosmetics Act 1940, is still marketed as 'Self-heating Pain relief Patch' and can be worn anywhere for alleviating the pain. Therefore, the product merits classification under CTH 3005 as the Customs Tariff is aligned with the HSN. Further, on perusal of the invoices furnished by the applicant, as mentioned in para supra the applicant's product is currently classified under HSN 3005 which is evident from the invoice raised in November 2021.


8.1 Having decided the classification as CTH 3005, the applicable rate for the product is as per Sl.No.64 of Schedule-II of Notification No. 01/2017-C.T.(Rate) dated 28.06.2017, which is as follows:

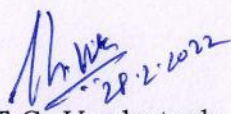
Sl.No:	HSN code	Description of goods	Applicable CGST rate		
			CGST	SGST	IGST
64	3005	Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes	6%	6%	12%

9. In view of the above, we rule as under:

RULING

The product Comfort patch is to be classified under HSN 3005 and the applicable CGST is @6% as per serial Number 64 in schedule II of Notification 01/2017 –Central Tax (Rate) dated: 28.06.2017 and applicable SGST is @ 6% as per Serial No. 64 of Schedule II of Notification G.O. (Ms) No.62 (No.II(2)/ctr/532(D-4)/2017) TNGST (Rate), dated: 29.06.2017.


Smt.K. Latha,
Member, TNGST


Shri T.G. Venkatesh,
Member, CGST



To,
M/s. Lagom Labs Private Limited,
715A, 7th Floor, Spencer Plaza,
Mount Road, Anna Salai, Chennai,
Tamil Nadu, 600 002.

// BY SPEED POST WITH ACK.DUE //

Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Additional Chief Secretary/Commissioner of Commercial Taxes/Member,
IInd Floor, Ezhilagam, Chepauk, Chennai – 600 005.

Copy to:

3. The Commissioner of GST & Central Excise Chennai (North) Commissionerate,
26/1, Mahatma Gandhi Road Nungambakkam, Chennai-600 034.
4. Assistant Commissioner (ST) Annasalai Assessment Circle,
1, PAPJM 4th Floor, Annexure Building, Greams Road, Chennai – 600 006.
5. Master File/ Spare – 2.

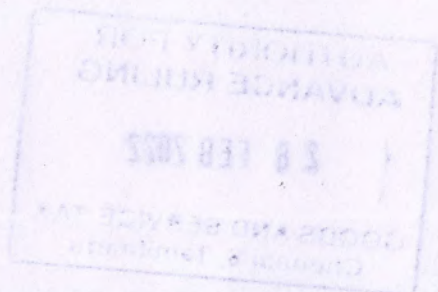
In view of the above, we are in error.

RULING

The United States Court of Appeals for the Ninth Circuit, in its decision in *United States v. [Name]*, 1985-1 CB 100, 85-1 USTC ¶13,000, 53 AFTR2d 85-1000, held that the Service's position in *United States v. [Name]*, 1985-1 CB 100, 85-1 USTC ¶13,000, 53 AFTR2d 85-1000, was correct.

[Signature]
Special Agent in Charge

[Signature]
Special Agent in Charge



Very truly yours,

Very truly yours,

Special Agent in Charge

Special Agent in Charge

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